Supreme Court, U. S.
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IN THE

# Supreme Court of the United States

**October Term, 1979**

**No. 79-1064**

PATRICK J. HANKINSON,

*Petitioner,*

vs.

DAVID K. RUHLMAN,

*Respondent.*

## BRIEF OF RESPONDENT IN OPPOSITION TO GRANT OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

HOWARD WILLIAM WHITE, JR.,
*Counsel for Respondent.*

DALE, WOODARD, MONTGOMERY
& WHITE,
1030 Liberty Street,
Franklin, Pennsylvania 16323,
(814) 432-2181.

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
PHONE: (716) 344-2000

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## BRIEF OF RESPONDENT IN OPPOSITION TO GRANT OF A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

### Respondent's Counter Statement of the Case

The Respondent, former Pennsylvania State Police Sergeant David K. Ruhlman, was awarded by a jury the sum of $50,000.00 in compensatory damages (including $1.00 punitive damages) against the Petitioner, Patrick J. Hankinson, who, as Ruhlman's Pennsylvania State Police Troop Commander, had ordered him transferred from the Franklin, Pennsylvania, State Police Station to the Erie, Pennsylvania, Barracks. This was a distance of 63 miles and a 2-hour drive (R. 429).

The jury specially found that the transfer was a retaliatory punitive transfer effected by the Petitioner, then Captain

Hankinson, to punish Sergeant Ruhlman for acting as a sounding board for young troopers who had come to Ruhlman complaining of an arrest quota system imposed by another sergeant at the Franklin, Pennsylvania, State Police Station. Sergeant Ruhlman counselled the troopers and advised the troopers to concentrate on the quality of the arrests without regard to numbers (R. 173, 186).

In January, 1975, Sergeant Ruhlman was the senior sergeant assigned to the Franklin, Pennsylvania, Police Barracks and had 26 years of experience as a Pennsylvania State Police Officer. At the special intercession of the Petitioner, Troop Commander Patrick J. Hankinson, one Sergeant Lorent was placed in charge of the traffic patrols at the Franklin station (R. 18) and was, in that position, immediately responsible for the traffic enforcement effort of the State Police station. He was also responsible for trooper assignments within the station. Shortly thereafter troopers began to approach Sergeant Ruhlman, their platoon sergeant, complaining that Sergeant Lorent had imposed an arrest quota on them, directing them to make at least 15 arrests per month. The troopers complained that they were threatened with transfers to distant assignments (R. 92) and loss of privileges (R. 54) if they failed to meet their quota of traffic arrests (R. 137). The troopers came to Sergeant Ruhlman for guidance because they respected his judgment as the senior sergeant assigned to the station (R. 73).

After Sergeant Ruhlman had heard numerous complaints, he reported the allegations to his immediate superior officer, the Station Commander, Lieutenant Robert Gorman. Shortly after his conservation with the Station Commander, Sergeant Ruhlman was advised by numerous troopers that the arrest quota had been increased from 15 arrests per month to 20



arrests per month (R. 171-72). Sergeant Ruhlman again approached the lieutenant in charge of the station but was rebuffed in his efforts to discuss the quota system and its effect on morale (R. 174). The arrest quota continued unabated at the Franklin, Pennsylvania, State Police Station until February, 1975, when, in frustration, a number of troopers, including Sergeant Ruhlman, complained of the quota and its effect on morale of the troopers assigned to the Franklin Station, to a local newspaper reporter (R. 136-37).

A series of articles was published in the local newspaper in March, 1975, relating to the dissatisfaction of the troopers concerning the arrest quota imposed by Sergeant Lorent and the low morale at the Franklin Station which, in a large part, resulted from the quota system (R. 144, Exhibit 12). The official reaction to the newspaper articles by the hierarchy of the Pennsylvania State Police was to abhor arrest quotas generally and to deny that a quota system had ever been in force at the Franklin Station (R. 141). As soon as the articles appeared in the newspaper, the imposition by Sergeant Lorent of the arrest quota ceased (R. 61).

The conduct and protected speech of Sergeant Ruhlman in this matter was to counsel the men who came to him and to assure them that their training and instincts were correct and that an arrest quota system was improper, and to only make good quality arrests without concentrating on numbers.

There was no evidence that Sergeant Ruhlman in any way disparaged Sergeant Lorent or any of the officers in his chain of command. Sergeant Ruhlman was transferred because the Troop Commander, the petitioner in this case, was aware that Sergeant Ruhlman had the trust and confidence of the men, had influence over them, and that, by rendering such counselling, Ruhlman was interfering with the quota enforcement

efforts at the Franklin Station. His objective was to remove Sergeant Ruhlman from the situation and also to make an example of him for the other troopers.

The petitioner has raised, for the first time, as an issue before the Supreme Court of the United States, an alleged erroneous charge to the jury by the trial judge.

It should be noted that counsel for petitioner took no exception to the charge of the trial judge (R. 571-73). The petitioner did not raise the adequacy of the charge of the Court in his motion for a new trial (A. 1a); and the matters of the adequacy of the charge to the jury and alleged bias of the trial judge were not raised by the petitioner before the Third Circuit Court of Appeals (A. 3a).

## REASONS FOR DENYING PETITION FOR A WRIT OF CERTIORARI

**I. The alleged errors relating to the adequacy of the charge by the trial judge to the jury and the alleged bias of the trial judge were not properly raised by petitioner prior to filing his Petition for a Writ of Certiorari.**

Counsel for petitioner has, in his Petition for a Writ of Certiorari, alleged error of the trial judge in his charge to the jury. Counsel did not, at the time that the trial judge asked for exceptions, state any exceptions to the charge (R. 571-73) as required by Rule No. 51 of the *Federal Rules of Civil Procedure*, Fed.R.Civ.P. 51. The purpose of Rule No. 51 is to require the stating of objections to the charge and to thereby enable the trial court to clarify or correct his statement before the jury retires. *New York, N.H. and H. R.R. v. Zermani*, 200 F.2d 240, 244-45 (1st Cir. 1952), cert. denied, 345 U.S. 917, 97 L.Ed. 1351, 73 S.Ct. 729 (1953). The alleged error in the



charge of the trial court was not raised in the petitioner's motion for a new trial (A. 1a) nor in petitioner's appeal to the Circuit Court. See, Statement of Issues Presented and Statement of the Scope of Review, extracted from the Brief for Appellant before the United States Court of Appeals for the Third Circuit (A. 3a).

Petitioner has also, for the first time before the Supreme Court of the United States, raised bias of the trial judge. Again, a review of the record at trial, post trial, and before the Third Circuit Court of Appeals discloses no claim of bias of the trial judge.

**II. Even if the Court applied the proposed rule of law to this case as proposed by petitioner, the evidence adduced at trial in this case would support the verdict rendered.**

The petitioner has stated that the rule emanating from *Pickering v. Board of Education*, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed. 2d 811 (1968) should be amended to provide as follows:

> "Speech is action. The underlying message of all civil and criminal law is that action is subject to limits. Before a policeman can lawfully counsel fellow employees or subordinates to disobey orders, he must refer back to his superior the propriety of the orders in question. And to take the next step, before he can fix his superiors with liability for interfering with his free-speech rights, he must give those superiors the opportunity to redress the situation."

*Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit*, at 28.

In the case at hand, it is clear the orders were illegal. The arrest quota system which the jury, by implication, found did exist, is stated to be abhorent to good police work. Even the Commissioner of the Pennsylvania State Police at the time had said, in relation to the imposition of an arrest quota system, "[Q]uotas are not used, are not condoned, and never will be." (R. 141). The topic of an arrest quota was certainly a matter to be talked about. All Sergeant Ruhlman did was confirm the official position of the State Police to the troopers who were being subjected to the arrest quota.

The petitioner contends that Sergeant Ruhlman, before he espoused opposition to the arrest quota system, should have first taken the matter up with his superiors. He did. He informed his Station Commander of the imposition of an arrest quota by Sergeant Lorent, the sergeant in charge of traffic enforcement. Lieutenant Gorman, the Station Commander, in response to the information, stated, "Yes, I know. I have already talked to Sarge about it. I will have to talk to him again." (R. 171). Shortly thereafter, instead of ceasing, the arrest quota number went up from 15 arrests per trooper per month to 20 arrests per month. Sergeant Ruhlman then tried again to discuss the matter with the Station Commander but he was "cut off a little bit short" (R. 229). The testimony established that Ruhlman did attempt to resolve the problem internally by going to his superior *before* he counselled the troopers on the correctness of the order and *before* he went to the press.



## Conclusion

The petitioner should not be permitted to raise matters before the Supreme Court of the United States which were not raised and passed upon by the trial court or the Court of Appeals for the Third Circuit. The Petition for a Writ of Certiorari filed by Patrick J. Hankinson should be denied.

Respectfully submitted,

DAVID K. RUHLMAN,
*Respondent.*

HOWARD WILLIAM WHITE, JR.,
*Attorney for Respondent.*

# APPENDIX

## Motion for New Trial or in the Alternative to Amend the Judgment

A True and Correct Copy
ATTEST: Frederick R. Nene

IN THE UNITED STATES DISTRICT COURT
For the Western District of Pennsylvania

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DAVID K. RUHLMAN,

vs.

PATRICK J. HANKINSON and
ROBERT B. GORMAN.

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Civil Action No. 76-73 Erie

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Defendant Patrick J. Hankinson by his attorney Frederick R. Nene, Assistant Attorney General, moves the court, pursuant to Federal Rule of Civil Procedure 59(a) to set aside the verdict of the jury returned herein on June 16, 1978, and the judgment entered on June 19, 1978, and to grant a new trial on the following grounds:

1. The verdict is contrary to the law.

2. The verdict is contrary to the evidence.

3. The evidence adduced on the trial thereof is totally insufficient to sustain the verdict returned by the jury that:

a. The plaintiff possessed a property right in his assignment to the Pennsylvania State Police Station in Franklin, Pennsylvania.

b. The plaintiff was punished for exercising his First Amendment right of free speech.

c. Defendant Hankinson acted with malice.

4. The evidence shows as a matter of law that the plaintiff was transferred for wholly administrative reasons prior to any conduct by the plaintiff that could be found to warrant punishment.

5. The verdict of the jury herein was excessive.

6. As a matter of law the pleadings did not state a claim upon which relief could be granted and therefore the matter should not have been submitted to a jury.

In the alternative defendant Hankinson moves the court pursuant to Federal Rule of Civil Procedure 59(e) to amend the judgment by reducing the damages for the reason that the award of damages is excessive and not warranted under the evidence presented.

These motions are based upon the records and proceedings in this action.

FREDERICK R. NENE,
Assistant Attorney General,

GERALD GORNISH,
Attorney General.

Dated June 27, 1978





## Statement of Issues Presented

I. Does a state police officer, acting on a personal belief that a departmental directive is improper, enjoy a constitutional right to advise subordinate officers to ignore that directive?

II. Does a state police officer enjoy a constitutionally protected property interest in an assigned duty station?

## Statement of the Scope of Review

As to each issue, the scope of review is the district court's error in submitting the case to the jury rather than giving judgment for the defendant as a matter of law at the close of the plaintiff's case.